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Fair Political Practices Commission  
428 "J" Street, Suite 800  
Sacramento, California 95814

Re: Public Input on the Applicability of the Public Generally Regulation to  
Comprehensive General Plan Amendments

Honorable Commission:

The purpose of this letter is to offer a proposed regulation regarding the application of the "public generally" exception to comprehensive general plan amendments. As has been discussed during the FPPC "Interested Persons" meetings, the application of the conflict of interest rules, including the public generally exception, to broad based comprehensive general plan amendments has been an area of confusion and difficulty for local agencies.

The County of San Diego has offered both verbal and written comments with respect to the issues associated with the applicability of the FPPC conflict of interest provisions to comprehensive general plan amendments. Our written comments to the FPPC, which are contained in two letters dated July 9, 2002 and September 19, 2002, set forth certain suggestions on how these issues may be addressed.

The letter dated July 9, 2002 specifically suggests that the FPPC should consider setting forth an exception to the conflict of interest provisions for a comprehensive general plan amendment that applies to a significant area of the governing body's jurisdiction. While the July 9 letter described the reasons why the FPPC should consider adopting such an exception, the letter did not set forth specific language in the form of a proposed regulation to implement such an exception.

The purpose of this letter is to present to the FPPC for its consideration a specific proposed regulation that addresses the issues identified during the "Interested Persons" meetings. Our proposal is to add a new section 18707.10 to the California Code of Regulations, to read as follows:

**Section 18707.10. Public Generally - Comprehensive General Plan Amendment**

- (a) The effect of a government decision on a public official's real property or business interests is indistinguishable from the effect on the public generally if all of the following apply:
  - (1) The government decision involves an amendment to the General Plan of the public official's agency or district the public official represents.
  - (2) The General Plan amendment applies to the entire jurisdiction of the public official's agency or district the public official represents.
- (b) Notwithstanding the applicability of subdivision (a), if the general plan amendment includes a provision that has a unique application to the specific real property or business interests of a public official, and such provision has little to no application to the other real property and business interests in the public official's agency or district, there is a rebuttable presumption that the effect of the general plan amendment on the public official's real property or business interests is not indistinguishable from the effect on the public generally.

Comprehensive general plan amendments attract a tremendous amount of public interest and participation. Due to the nature of comprehensive general plan amendments and their substantial involvement from the public, they result in broad based actions to advance the public interest, not private interests. This proposed regulation excludes any possible situation that a general plan amendment would apply to only a handful of properties. By its very nature, such a broad based land use action would be focused on serving the overall public interest, and would not be designed to benefit a few private interests. Therefore, even assuming that the application of the general plan amendment may benefit a public official's interests, the same action would likewise benefit all other properties and interests because of the overall broad applicability of the general plan amendment to all real property and business interests. Moreover, as described below, the proposed regulation includes a "safety valve" should the general plan amendment uniquely benefit the public official's interests.

The proposed regulation includes an exception under subdivision (b) so that it does not apply to a comprehensive general plan amendment if a provision in the amendment is written in such a way so that it has a unique application to the public official's real property or business interests, and the provision has little to no application to the other real property or business

interests in the official's agency or district. Under this situation, the proposed regulation provides that a rebuttable presumption is created that the effect of the government action on the public official's interests is not indistinguishable from the effect on the public generally.

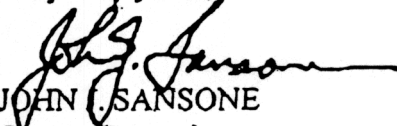
This proposed regulation would increase the likelihood that elected officials would be able to participate in what is probably the most significant decision they make affecting their constituents and agency. Such a regulation would eliminate the problems associated with applying the conflict of interest rules to government actions involving comprehensive general plan amendments.

As was demonstrated by the public comment and input at the "Interested Persons" meeting on this subject, the conflict of interest rules, including the public generally provisions, are confusing and extremely difficult to apply to comprehensive general plan amendments. Moreover, as described in our September 19, 2002 letter, it is virtually impossible for a public official to satisfy the public generally requirements if the public generally provisions are interpreted to require a public official to know the effect a government decision has on the fair market values of other properties. Therefore, under the current rules, it is highly unlikely that a public official would ever qualify to participate in a comprehensive general plan decision that is applicable to his/her real property interests.

Rules that prevent a public official from participating in a decision-making process involving comprehensive general plan amendments have the effect of disenfranchising the official's constituents on the most important jurisdictional land use decision by their elected representative. This proposed regulation is appropriate because the nature of the decision involving a comprehensive general plan amendment is truly different from all others in terms of its scale, impact, and level of public participation.

Thank you for the opportunity that you have provided to participate in your rule making procedure. I also want to take this opportunity to express my sincere thanks and appreciation for the excellent work of your staff in reaching out to interested persons for comments on this subject. In particular, John Wallace and Natalie Bocanegra have been extremely helpful throughout this process. Their professionalism reflects very well on the FPPC.

Very truly yours,

  
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